

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI ARMSTRONG  
RETIREE MEDICAL BENEFITS TRUST;  
TEAMSTERS HEALTH & WELFARE FUND  
OF PHILADELPHIA AND VICINITY;  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE  
FUND, and DISTRICT 37 HEALTH AND  
SECURITY FUND,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri  
corporation; and McKESSON  
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**JOINT MOTION TO AMEND COURT'S DISCOVERY  
AND SUMMARY JUDGMENT DEADLINES**

Plaintiffs and McKesson jointly move to vacate the Court's February 13, 2006 scheduling order to set new discovery and summary judgment deadlines consistent with the deferred certification schedule. In support of this motion, the parties state as follows:

When the Court issued its initial scheduling order on February 13, 2006, it set among other things the close of fact discovery two and a half months after the date set for a hearing on Plaintiffs' motion to certify the Class and the deadline for summary judgment motions six months after the certification hearing. Subsequently, at the request of the parties, the Court modified its original order on several occasions, most recently on September 19, 2006, to defer the certification hearing seven months from the original date set by the Court. None of the

orders modifying the scheduling order addressed the Court's discovery and summary judgment deadlines. The Court's prior scheduling order is as follows:

<b>The Court's February 13, 2006 Order</b>	
Hearing on Class Certification	September 19, 2006, 2:00 p.m.
Plaintiffs' expert designation:	November 15, 2006
Defendants' expert designation	December 15, 2006
Fact Discovery Deadline:	January 31, 2007
Expert Discovery Deadline:	March 9, 2007
Summary Judgment Motion Filing Deadline:	April 9, 2007
Opposition by:	May 9, 2007
Hearing on Summary Judgment or Pre-trial conference	June 27, 2007 2:00 p.m.

As it now stands, both the summary judgment and discovery deadlines precede the certification hearing, which is inconsistent with the Court's original scheme. In addition, the parties request that the Court modify the schedule to close fact discovery before expert designations and reports are due to allow the parties' experts to take into account all of the information gathered during fact discovery. The parties note that the Court's CMO No. 13 (March 10, 2005) in *In re AWP* (attached for the Court's convenience as Exhibit A) similarly provided that fact discovery be completed before expert designations were to begin. Finally, the parties suggest that the Court's order set deadlines for reply and surreply briefs to any motions for summary judgment.

For the foregoing reasons, Plaintiffs and McKesson respectfully request that the Court vacate its February 13 order in its entirety and enter the parties' proposed schedule or such schedule as is convenient to the Court:

<b>[Proposed] Scheduling Order</b>	
Hearing on Class Certification	April 12, 2007, 2:00 p.m.
Fact Discovery Deadline	June 1, 2007
Plaintiffs' expert designation:	July 2, 2007
Defendants' expert designation:	Aug. 1, 2007
Expert Discovery Deadline:	Aug. 31, 2007
Summary Judgment Motion Filing Deadline:	Oct. 3, 2007
Opposition by:	Nov. 2, 2007
Any replies due:	Nov. 16, 2007
Any surreplies due:	Nov. 30, 2007
Hearing on Summary Judgment	Jan. 10, 2008, 2:00 p.m.

Dated: November 29, 2006

Respectfully submitted,

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI ARMSTRONG  
RETIREE MEDICAL BENEFITS TRUST,  
TEAMSTERS HEALTH & WELFARE FUND  
OF PHILADELPHIA AND VICINITY, and  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE  
FUND

McKESSON CORPORATION

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on November 29, 2006.

/s/ Steve W. Berman  
Steve W. Berman

# Exhibit A

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
IN RE PHARMACEUTICAL INDUSTRY	)	MDL NO. 1456
AVERAGE WHOLESALE PRICE	)	CIVIL ACTION NO.
LITIGATION	)	01-12257-PBS
_____	)	

**CASE MANAGEMENT ORDER NO. 13**

March 10, 2005

Saris, U.S.D.J.

After review of the submissions, I order the following revised schedule for track one defendants:

1. Regardless of the status of the motion for class certification:

August 31, 2005	- Close of Fact Discovery
October 1, 2005	- Plaintiffs file their expert reports on liability
November 15, 2005	- Defendants file expert reports on liability
January 15, 2006	- Completion of expert depositions

2. If this Court's order on class certification is unappealed, the parties shall propose a schedule for summary judgment briefing within 15 days of the Court's order.

3. If this Court's order on class certification is appealed:

30 days after the Court of Appeals' decision on appeal from class certification ("Appeals Decision")	- Defendants' motion for summary judgment
60 days after the Appeals Decision	- Plaintiffs' opposition



75 days after the Appeals  
Decision

- The Reply

90 days after the Appeals  
Decision

- The Surreply

S/PATTI B. SARIS  
United States District Judge

# Exhibit B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS  
HEALTH BENEFITS FUND; PIRELLI  
ARMSTRONG RETIREE  
MEDICAL BENEFITS TRUST;  
TEAMSTERS HEALTH & WELFARE  
FUND OF PHILADELPHIA AND  
VICINITY; and PHILADELPHIA  
FEDERATION OF TEACHERS HEALTH  
AND WELFARE FUND,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri  
Corporation; and McKESSON  
CORPORATION, a Delaware Corporation,

Defendants.

Civil Action No. 1:05-CV-11148-PBS

**[PROPOSED] SCHEDULING ORDER**

IT IS HEREBY ORDERED as follows:

1. The Court's February 13, 2006 Scheduling order is vacated in its entirety.
2. Fact discovery to be completed by June 1, 2007.
3. Plaintiffs' expert designations and reports are due July 2, 2007.
4. Defendants' expert designations and reports are due August 1, 2007.
3. Expert discovery to be completed by August 31, 2007.
4. Summary judgment motion to be filed by October 3, 2007.
5. Oppositions to be filed by November 2, 2007.
6. Replies in support of summary judgment to be filed by November 16, 2007.

7. Surreplies on summary judgment to be filed by November 30, 2007.
8. Hearing on Summary Judgment will be held on January 10, 2008 at 2:00 p.m.

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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HONORABLE PATTI B. SARIS  
United States District Court

**CERTIFICATE OF SERVICE**

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 29<sup>th</sup> day of November, 2006.

/s/ Steve W. Berman

Steve W. Berman